the more thoroughly will they test the witness's ability to detect them.[12] Many jurisdictions, however, for fear of collateral issues or unfairness, arbitrarily restrict the admission of specimens on the direct examination to those admitted to be genuine or those already in the case.[13] This rule of thumb, imperfect even for direct examination, cannot be meant to apply to cross-examination. Collateral issues would be avoided by the use of specimens admitted to be false as well as those admitted to be true, while the papers already in the case necessarily afford only genuine signatures. So, even in courts so limiting the juxtaposition of signatures on the direct examination, no insurmountable legal obstacle exists to the full use of this test of the witness.[14]

RECENT CASES

ABATEMENT AND REVIVAL — SURVIVAL OF ACTION — BREACH OF PROMISE OF MARRIAGE: SPECIAL DAMAGES. — In an action for breach of promise to marry, the plaintiff alleged as special damages that she gave up a business in which she was engaged, in consideration of the defendant's promise to marry her. Before the pleadings were delivered the defendant died. *Held*, that the action cannot be maintained against the executor. *Quirk* v. *Thomas*, 31 T. L. R. 237 (K. B.).

Lord Ellenborough's *dictum* that an action for breach of promise of marriage will survive against an executor if there are special damages has been widely repeated in the books. See *Chamberlain* v. *Williamson*, 2 M. & S. 408, 411; *Stebbins* v. *Palmer*, 18 Mass. 71, 75. But what special damages will suffice for

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[12] Eccentric genuine signatures or genuine ones written especially for the occasion could be excluded here by the court as well as in direct examination.

[13] The authorities on this point, which is largely governed by statute, are so diversified as to admit of no systematic classification. See 3 WIGMORE, EVIDENCE, §§ 2008, 2016, n. Three rules, however, may be taken as typical. (1) Comparison is not permissible. Gibson *v.* Trowbridge Co., 96 Ala. 357, 11 So. 365; Kinney *v.* Flynn, 2 R. I. 319. (2) Only specimens admitted to be genuine or already otherwise in the case may be used for comparison. Macomber *v.* Scott, 10 Kan. 335; Vinton *v.* Peck, 14 Mich. 287. (3) Signatures are admissible for comparison if proved to the satisfaction of the trial judge. See n. 10, *supra*.

[14] The authorities upon this point are extraordinarily confused. Though the case of the lay witness is in every respect more clear than that of the expert, it has been suggested that even where the test is allowed in the case of the expert, it cannot be applied to the lay witness. See Wilmington Savings Bank *v.* Waste, 76 Vt. 331, 336, 57 Atl. 241. But for the most part the question of whether the test is permissible is treated alike for both sorts of witnesses. See Page *v.* Homans, 14 Me. 478, 487; 3 WIGMORE, EVIDENCE, §§ 2014, 2015. In jurisdictions where extraneous specimens are provable for the purpose of the direct examination, the use of forged signatures in cross-examination has several times been allowed. Hoag *v.* Wright, 174 N. Y. 36, 66 N. E. 579; Browning *v.* Gosnell, 91 Ia. 448, 59 N. W. 340. But see Andrews *v.* Hayden's Adm'rs, 88 Ky. 455, 11 S. W. 428. But in those jurisdictions which do not allow the proof of extraneous specimens for the purposes of the direct examination, the decisions do not permit the proof of such specimens for impeachment. Gaunt *v.* Harkness, 53 Kan. 405. However, some of the jurisdictions which forbid the proving of extraneous specimens for the purpose of the cross-examination permit the test if made exclusively with unproven signatures and those employed in the direct examination. Johnston Harvester Co. *v.* Miller, 72 Mich. 265, 40 N. W. 429. *Cf.* Howard *v.* Patrick, 43 Mich. 121, 5 N. W. 84.

the purpose is much in doubt. It is clear that where in addition to the promise to marry there was a promise to give property to the plaintiff, breach of the latter promise will create a cause of action, which survives against the promisor's executor. See *Finley* v. *Chirney*, 20 Q. B. D. 494, 500. Perhaps this is what is meant by the common statement that the action will survive if the promise directly affects the plaintiff's property. See *Hovey* v. *Page*, 55 Me. 142, 145. Certainly pecuniary loss directly caused by the breach is not enough to make the action survive. *Finley* v. *Chirney*, *supra*. Indeed no case has been found in which a suit on a bare promise to marry survived the death of either party unless by force of a statute. *Shuler* v. *Millsaps*, 71 N. C. 297; *Stewart* v. *Lee*, 70 N. H. 181, 46 Atl. 31. The principal case strengthens the probability that the maxim "*actio personalis moritur cum persona*" will not be encroached upon in this class of cases.

ACCRETION — RIGHT OF RIPARIAN OWNER TO ARTIFICIAL EXTENSIONS OF HIS BANK. — Two islands, owned by the plaintiff and the defendant, respectively, were separated by a navigable slough. The state built a dyke across the head of the slough, with the result that sandbars formed and gradually connected the islands. This process was greatly accelerated by the use of the slough as a dumping ground for sand dredged by the state from another channel. The plaintiff now sues to quiet title to that part which he claims as his proportionate share of the accretion. *Held*, that he is entitled to the relief sought. *Gillihan* v. *Cieloha*, 145 Pac. 1061 (Ore.).

It seems well settled that a riparian owner is entitled to accretions although they arise incidentally from the presence of a wharf, dyke, or other artificial condition. *Tatum* v. *City of St. Louis*, 125 Mo. 647, 28 S. W. 1002; *Roberts* v. *Brooks*, 78 Fed. 411, 415. Such structures, however, must not have been erected by the riparian owner himself with the object of causing the accretion. See *Attorney-General* v. *Chambers*, 4 DeG. & J. 55, 69. The principal case, admittedly presents an extraordinary example of accretion from artificial causes, for the extension was largely due to the notorious use of the slough as a dumping ground for sand dredged elsewhere by the state. But the court takes the position that as against everyone but the state, the plaintiff is entitled to this artificial addition to his banks. While there is little authority on the point, the result seems just enough. Certainly, the riparian owner would prevail against a wrongdoer who had made such a deposit in front of the uplands. *Steers* v. *City of Brooklyn*, 101 N. Y. 51, 4 N. E. 7; *City of Memphis* v. *Wait*, 102 Tenn. 274, 52 S. W. 161. And in the principal case, where the state does not claim the new land, it is equitable to consider it accretion as between the rival owners and to divide it in such proportions as will best preserve their valuable water rights, — especially as a possessory title upon public lands has been held sufficient to maintain the statutory suit to quiet title. *Pralus* v. *Pacific G. & S. M. Co.*, 35 Cal. 30. Furthermore, it would be doubtful whether the state, having filled in the slough and made it useless for navigation, could thereafter assert title thereto. See *Ledyard* v. *Ten Eyck*, 36 Barb. (N. Y.) 102, 125.

BANKRUPTCY — DISCHARGE — EFFECT OF DISCHARGE ON SURETY'S CONTINGENT CLAIM TO INDEMNITY. — The principal obligor broke the contract prior to bankruptcy. After the discharge of the principal obligor, the surety paid the creditor, and now sues the principal for reimbursement. *Held*, that his recovery is barred by the discharge. *Williams* v. *United States Fidelity, etc. Co.*, U. S. Sup. Ct. Off., No. 80 (Feb. 23, 1915.)

The present Bankruptcy Act, unlike its predecessor, does not provide specifically that contingent claims shall be provable. As a result the law on the point is in confusion. On principle it would be desirable to free the bankrupt from as many of his obligations as are susceptible of valuation, but some of